IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.11488 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

==========

LABHUBHAI HAMIRBHAI RAVAL (BHIL) - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR ASIM PANDYA for HL PATEL ADVOCATES for the Petitioner
MR SHIVANG SHUKLA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2.

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 14/08/2007

ORAL JUDGMENT

(1) RULE. Learned Assistant Government Pleader appearing on behalf of respondent No.1 is directed to waive service of rule. Though served, there is no appearance on behalf of

respondent No.2. In light of the view that the Court is inclined to adopt the petition is taken up for final hearing and disposal today.

(2) The petitioner was elected as President of Mundra Taluka Panchayat in the month of October 2005 on the basis of seat reserved for Schedule Caste / Schedule Tribe. The case of the petitioner was that the petitioner belonged to “Bhil” caste and hence, was entitled to contest on reserved seat. One Lakhuram K. Goradiya filed a complaint in the Court of Judicial Magistrate, First Class, Mundra against the petitioner for the offences punishable under Sections 191, 192, 193, 196, 197, 198, 199, 203, 420, 463, 466, 468, 470, 471, 472, 474, 475, etc. of the Indian Penal Code. Pursuant to the directions issued by the Magistrate to initiate inquiry under Section 156(3) of the Code of Criminal Procedure the police registered M. Case No.1 of 2005 against the petitioner. The Regular Bail application was rejected by the subordinate Court and

conditional bail was granted by the High Court vide order dated 25.09.2006 made in Criminal Misc. Application No.10305 of 2006.

(3) In the meantime, acting under the provisions of Section 73 of the Gujarat Panchayats Act, 1993 (the Act), respondent No.2 passed an order on 23.09.2006 suspending the petitioner from the post of President of Mundra Taluka Panchayat. The petitioner carried the matter in Appeal vide Appeal No.188 of 2006. However, respondent No.1 dismissed the appeal vide order dated 06.03.2007.

(4) On behalf of the petitioner Mr. Pandya, learned advocate submitted that respondent No.2 authority had failed to take into consideration the relevant documents and had placed reliance on irrelevant documents and, therefore, the order dated 23.09.2006 was vitiated, but, the appellate authority failed to grasp this and confirmed the order made by respondent No.2 without any valid reasons.

Inviting attention to the order dated 23.09.2006 made by respondent No.2 authority it was submitted that the first document, which was taken into consideration by respondent No.2 authority, was a letter written by Police Sub Inspector, Mundra which proposed removal of the petitioner from the post of President. Hence, it was pointed out that the authority had placed reliance on a communication from an authority who was not empowered to make any proposal for passing orders under Section 73 of the Act.

(5) As against that on behalf of respondent No.1 authority the learned Assistant Government Pleader submitted that the order had to be read as a whole and it was apparent that the letter from the Sub Inspector was not the only document on which reliance had been placed. That in fact the order of respondent No.2 authority revealed that there were other documents on record which went to establish that the petitioner had committed an offence

involving moral turpitude and had been detained in prison. That this fact by itself was sufficient to empower the authority to exercise the powers under Section 73 of the Act and, therefore, no interference was warranted and the appellate authority had rightly confirmed the order made by the respondent No.2 authority.

(6) During course of hearing the learned Assistant Government Pleader was requested by the Court to obtain a copy of the letter of Police Sub Inspector, Mundra and verify whether the said letter merely recorded the facts or went further and made a proposal. The learned Assistant Government Pleader has obtained a copy of the said letter from the record and placed the same on record of these proceedings. On going through the said communication it is apparent that while tendering the report of the progress of inquiry the Sub Inspector has proposed removal of the petitioner from the post of President

and requested respondent No.2 authority to initiate action in this regard in accordance with law. Thus, it is apparent that not only has the Police Sub Inspector exceeded his jurisdiction but respondent No.2 authority has also taken note of the proposal made as is evident from the first two paragraphs of the order dated 23.09.2006. It is correct that respondent No.2 authority has also taken into consideration other pieces of evidence and documents while framing the order dated 23.09.2006 but it is not possible to segregate the first two paragraphs from the order dated 23.09.2006. The law is well settled. When irrelevant factors / evidence / documents are taken into consideration it is not possible to state to what extent the mind of the authority stands vitiated. In such circumstances, it is not possible to break up the order in relation to the relevant factors and irrelevant factors and justify one part of the order while quashing other part of the order. The order in

entirety has to be set aside.

(7) The opening portion of Section 73(1) of the Act requires the competent authority to suspend from office any President or Vice President against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted, or who has been detained in a prison during trial for any offence or who is undergoing such sentence for an imprisonment, etc. However, the said provision grants a discretion to the competent authority because the language used by the statute is the competent authority “may” suspend from office any President, etc. In the circumstances, the competent authority is required to pass an order after exercising the discretion in accordance with the requirements of the provisions and it is clear that no irrelevant document can enter the zone of consideration while exercising such discretion. The exercise of discretion vested in the authority cannot be guided by or based

on a proposal by a third party. The discretion has to be of the competent authority alone and no one else.

(8) Therefore, the order dated 23.09.2006 made by respondent No.2 authority stands vitiated and cannot be sustained. The appellate authority has failed to consider this legal position in light of undisputed facts available on record. The order of appellate authority, therefore, also cannot be sustained.

(9) In the result, both orders, dated 06.03.2007 made by the appellate authority and dated 23.09.2006 made by respondent No.2 authority, are hereby quashed and set aside. Needless to state that it will be open to respondent No.2 authority to pass a fresh order in accordance with law, if the facts and circumstances so warrant. The petition is allowed accordingly to the aforesaid extent. Rule made absolute. There shall be no order as to costs. Direct

service permitted.

Sd/-
[D.A. MEHTA, J]

***

Bhavesh*